

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Denial
of a Day Care License
Application Submitted
by Joan McGuire.

FINDINGS OF FACT
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 9:30 a.m. on Tuesday, October 9, 1990 at the Office of Administrative Hearings, Minneapolis, Minnesota. The record closed at the conclusion of the hearing.

Christi S. Wendorff, Assistant County Attorney, Suite 400, 350 St. Peter Street, St. Paul, Minnesota 55102, appeared on behalf of Ramsey County Community Human Services Department. Joan S. McGuire, 2045 Sherwood Avenue East, St. Paul, Minnesota 55119, appeared and testified on her own behalf. Appearing and testifying along with Ms. McGuire were her husband, Ronald, and her daughter, Michelle.

Notice is hereby given that, pursuant to Minn. Stat. 14.61 the final decision of the Commissioner of Human Services shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Ann Wynia, Commissioner of Human Services, 2nd Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3815.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether the Application for a group family day care license submitted by Joan McGuire to the Ramsey County Community Services Department should be denied due to an alleged violation of Minn. Rules 9502.0335, subp. 6(E).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Joan McGuire, age 39, lives with her husband, Ronald McGuire, age 48, and their children, Dawn, age 20, Michelle, age 19, and Ronald, age 17, at 2045 East Sherwood, St. Paul, Minnesota 55119.

2. Joan McGuire has been babysitting for over nine years. She submitted an application for a group family day care license to Ramsey County in December 1989 in order to allow her to care for more than one family at a time. On the initial application fact sheet, no previous contact with Ramsey County Human

Services (hereafter, the County) was disclosed. Upon inquiry by the County, Joan McGuire provided additional information concerning contact with the County three years earlier and properly completed the application process. The County has not sought disqualification for the incomplete information on the initial fact sheet. On May 9, 1990 the County recommended denial of the license application to the State Department of Human Services (hereafter, DHS). DHS denied the application on July 10, 1990. The basis of denial is an incident of substantiated child abuse which is a license application disqualification factor under Minn. Rule 9502.0335, subs. 6(E)(F). The admitted incident was committed by Ronald McGuire, husband of the Applicant, against Michelle, the daughter of Ronald McGuire and Joan McGuire, as set forth below.

3, On October 20, 1987, Michelle attended the homecoming game at Johnson Senior High School. She was given an 11:00 p.m. curfew with instructions to call home if she would be late or planned to go out to eat after the game. She left the game early and told her brother, who was also at the game, that she was going to Burger King to eat. Later, she was driving with her boyfriend in a construction site and the vehicle became stuck in some mud. She did not arrive home until 3:00 a.m. on October 21, 1987 and did not call. When she arrived home, she told her father that she did not need to explain anything to him. Her father became angry and hit Michelle with the back side of his hand. Mr. McGuire wears a company ring on the hand that he hit Michelle with. Michelle was hit on the right side of her face which caused her to hit the kitchen wall. A ceramic wallhanging fell off the wall and broke. While Michelle was picking up the pieces, her father pulled her hair

4. Mrs. McGuire got Michelle up for school the next morning and noticed her lip was swollen. After arriving at school, Michelle went to see the school social worker, Mr. Johnson. She also saw the school nurse, Susan Will, for the injuries she had sustained. Ms. Will observed a swollen lip with dried blood from a split on the lip and swelling under the right eye. Michelle told her she ached all over and that her right jaw was sore. Ms. Will reported the incident to the police. An officer came to the school and a report was made. No charges were filed, but Mr. McGuire was telephoned and requested to come to the station which he voluntarily did.

5. Michelle was sent to an emergency foster shelter service in Ramsey County. A screening was performed by Elizabeth Mazzitello, a Ramsey County public health nurse, at the shelter's request. Ms. Mazzitello observed a discolored lower lip. Michelle said that her head, right jaw and eye were sore.

6. On October 28, 1987, Mr. Anthony Frascone of Child Protection completed the initial abuse report after visitng Michelle at her home on October 23, 1987. During this visit, Mr. Frascone talked with Michelle's mother, father and brother. The abuse was determined to be substantiated. The case was given a "very good prognosis" with no additional contacts needed as Mr. McGuire had set up counseling voluntarily.

7. Mr. and Mrs. McGuire, along with their three children living at home, Michelle, Dawn and Ronald, attended counseling with Dr. Michael Appleman, Ph.D., on November 23, 1987 at Group Health, Inc., the family's insurance carrier. The counseling consisted of a discussion of Mr. McGuire's work and questions addressed to the children which caused fighting and frustration. The children refused to return to counseling, finding it unhelpful and aggravating.

8. Mr. McGuire attended the counseling to address discipline problems with Michelle. He admits the occurrence of this incident and is remorseful. He has five children, and Michelle is the only child with whom he has had problems.

9. In November of 1987, Michelle became pregnant. She told her parents just before Christmas. Michelle chose to have an abortion in January of 1988. Michelle received counseling from Dr. Hampton about the abortion. She also received counseling from Dr. Kaye Zuengler in 1988 for chemical abuse.

10. Michelle started to leave home on the weekends without calling her family to indicate where she was or whether she was all right. She left home permanently in November of 1988. She was away from home for nearly a year. She did maintain some contact with her parents by phone. She quit school in January 1989 and lost her job. She returned home in November 1989 contingent upon her following family rules and attaining her GED. Michelle has fulfilled both conditions and has not had any problems with her father.

11. Mr. McGuire has been a sheet metal worker for 28 years. He works for the Harris-Waldinger Corporation Monday through Friday from 7:30 a.m. to 4:30 p.m. He leaves his home at approximately 6:45 a.m. and returns home around 5:15 p.m. Michelle works as a waitress Monday through Friday from 10:30 a.m. to 4:30 p.m.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. 245A.08, subd. 1 and 14.50 (1989).

2. The Notice of Hearing issued by the County in this matter was proper in all respects and both the County and Department have complied with all substantive and procedural requirements of law and rule.

3. Pursuant to Minn. Stat. 245A.08, subd. 3(b) (1989), the Applicant carries the burden of proof to demonstrate by a preponderance of the evidence that the Applicant is in compliance with applicable rules and laws pertaining to the licensure.

4. The Applicant did not prove compliance with Minn. Rule 9502.0335, subp. 6(E) (1989) which provides for the disqualification of a group day care

license application if any person living in the day care residence has engaged in physical child abuse as established by substantial evidence or an admission.

S. The incident that occurred between Ronald McGuire and Michelle McGuire on October 21, 1987 was admitted and constitute physical abuse as defined by Minn. Stat. 626.556, subd. 2(d) (1989).

6. The McGuire family has openly addressed the incident in compliance with County directives.

7. The October 21, 1987 incident of physical child abuse is the sole ground for the application denial.

8 Pursuant to Minn. Stat. 245A.08, subp. 4 (1 989) , the Administrative Law Judge shall make a recommendation as to whether the Commissioner's Order should be affirmed within the confines of Minn. Stat. 245A.01 to 245A.16 and the rules of the Commissioner.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Order denying a group day care license to Joan McGuire be AFFIRMED, however, that the Application be reconsidered if Hr. McGuire obtains a successful psychological evaluation concerning the potential for further abusive activities from a psychologist approved by the Commissioner.

Dated this day of November, 1990.

PETER C. ERICKSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped.

MEMORANDUM

The record in this matter shows one incident of physical child abuse by Mr. McGuire on his daughter Michelle. It also indicates that the McGuire family has confronted the issue with voluntary therapy, and that at the time of the incident three years ago, the County did not see a need for further involvement. However, Minn. Rule 9502.0335, subp. 6E. mandates that an application shall I not be granted if any person living in the day care residence has admitted to an act of physical abuse. For the reasons set forth below, the Judge has concluded

that a license should be granted in this case if Mr. McGuire can obtain an evaluation from a psychologist indicating that there is no further danger of abusive activities.

The circumstances surrounding the incident of abuse herein indicate a highly troubled time for Michelle and her parents. There is no indication of any trouble with the other four children. The evidence shows that they have successfully worked together to resolve and heal both Michelle's problems and Mr. McGuire's act of abuse. The incident is now three years in their past, and the testimony reflects a positive home life. Mr. McGuire expressed his remorse over the incident during his testimony and Michelle testified that the incident occurred because of her provocation.

Mr. McGuire works full-time and is not at home from 6:45 a.m. to 5:15 p.m. Michelle is working Monday through Friday from 10:30 a.m. to 4:30 p.m. Mr. McGuire would have minimal contact, if any, with the children being provided with care. Michelle would also have a minimum of contact. There is no question as to the competency of the Applicant to provide care.

After listening to the testimony of Mr. and Mrs. McGuire, the Judge is convinced that the Applicant is completely qualified to perform the responsibilities of a day care provider and that there is no risk of harm to day care children from Mr. McGuire's presence in the home. If this conclusion (regarding Mr. McGuire) is confirmed by a psychologist, the Applicant should be granted a license to provide day care.

P.C.E.